

### **Status of the Claims**

**Claims 2, 3, 8, 9, 22, 39, 42-47, 49, and 50-58** are pending and under examination.

**Claims 3, 22, 42, 43, and 49** are allowed.

**Claims 1, 4-7, 10-21, 23-38, 40-41, and 48** are canceled.

**Claim 39** is amended to remove 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, and new matter issues asserted in the Advisory Action dated December 15, 2009 (hereinafter called “Advisory Action”).

**Claims 44-46** are amended, and **claims 53-58** are newly added to overcome the Examiner’s objection (asserted in the Advisory Action) that a multiply dependent claim cannot depend from another multiply dependent claim.

Examiner indicated in the Advisory Action that **claims 2, 8, 9, and 47** would have been allowed if the Amendment filed on December 3, 2009, had been entered. Applicants filed a Request for Continued Examination on January 4, 2010, requesting entry of the December 3, 2009, Amendment. Therefore, it is respectfully requested that **claims 2, 8, 9, and 47** also be allowed.

### **Claim 39, amendments for compliance with 35 U.S.C § 112, 2<sup>nd</sup> paragraph**

The Examiner asserted in the Advisory Action that amendments to **claim 39** raised § 112 issues because

- (1) “there are two sets of promoters, the endogenous one that is rendered responsive to pathogens and the one that is produced by the method. The two should be distinguished as, for example, a chimeric promoter or a chimeric expression sequence produced by inserting at least one cis element into a promoter and thereafter referring to the chimeric promoter or the promoter”; and
- (2) “the method only requires insertion of at least one cis element, however, item 4) requires that a minimal promoter be part of the end sequence. This cannot be without its insertion as part of the method.”

As to (1), Applicants amend **claim 39**, items (4) and (5), to replace “the promoter” with “the at least one *cis*-acting element.”

As to (2), Applicants amend **claim 39**, items (4) and (5) to remove the “minimal promoter” requirement.

It is therefore respectfully submitted that these amendments remove any issues under 35 U.S.C. § 112.

#### **Claim 39, amendments to remove new matter issues**

The Examiner asserted in the Advisory Action that amendments to **claim 39** raised new matter issues because

- (1) “by reciting that the chimeric promoter is 1) 2) or 3) and 4), the claimed promoter comprises a number of combined elements that are not so disclosed as used together”; and
- (2) “the method as amended recites that the *cis* elements are inserted into the promoter and furthermore comprise a minimal promoter. This duplication of promoter elements is not so described in the specification.”

As to (1), Applicants amend **claim 39** to remove the “and” between items (3) and (4) and replace it with “or.”

As to (2), Applicants amend **claim 39**, items (4) and (5), to replace “the promoter” with “the at least one *cis*-acting element” and to remove the “minimal promoter” requirement.

It is therefore respectfully submitted that these amendments remove any new matter issues.

#### **Objections to claims 44-46**

The Examiner objected to **claims 44-46** in the Advisory Action because these claims were multiply dependent claims dependent from other multiply dependent claims (**claims 8 and 9**).

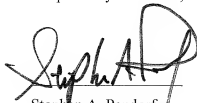
Applicants amend **claims 44-46** to remove reference to **claims 8 and 9**. New **claims 53-55** are added to mirror **claims 44-46**, but are dependent from **claim 8** only. New **claims 56-58** are added to mirror **claims 44-46**, but are dependent from **claim 9** only.

It is therefore respectfully submitted that these amendments remove objections based on multiple dependencies.

The Commissioner is hereby authorized to charge any fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account Number 16-0877.

**Should further issues remain prior to allowance, the Examiner is respectfully requested to contact the undersigned at the indicated telephone number.**

Respectfully submitted,



Stephan A. Pendorf  
Registration No. 32,665

Patent Central LLC  
1401 Hollywood Blvd.  
Hollywood, FL 33020-5237  
(954) 922-7315

  
Dr. Katherine E. Dover  
Registration No. 65,309

Date: **January 5, 2010**